

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

**FINAL**

**ORDER**

**Title XIX Medicaid State Plan Program Integrity**

**NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan regarding Program Integrity, specifically, *Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the May 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The proposal amends the Title XIX Medicaid State Plan regarding General Program Administration. Specifically, this plan amendment implements a Medicaid payment provision entitled, *Prohibition on Payments to Institutions or Entities Located Outside of the United States*.

**Statutory Authority**

Patient Protection and Affordable Care Act (PPACA), P.L. 111-148

**Background**

Section 6505 of the Affordable Care Act amends section 1902(a) of the Social Security Act (the Act), and requires that a State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States (U.S.).

For purposes of implementing this provision, section 1101(a)(2) of the Act defines the term "United States" when used in a geographical sense, to mean the "States." Section 1101(a)(1) of the Act defines the term "State" to include the District of Columbia, Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, when used under Title XIX.

The phrase, "items or services provided under the State plan or under a waiver" refers to medical assistance for which the State claims Federal funding under section 1903(a) of the Act. Tasks that support the administration of the Medicaid State plan that may require payments to financial institutions or entities located outside of the U.S. are not prohibited under this statute. For example, payments for outsourcing information processing related to plan administration or outsourcing call centers related to enrollment or claims adjudication are not prohibited under this statute.

However, payments for items or services provided under the State plan to financial institutions or entities such as provider bank accounts or business agents located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa are prohibited by this provision. Further, this provision prohibits payments to telemedicine providers located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa. Additionally, payments to pharmacies located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa are not permitted.

States will need to submit a State plan amendment (SPAs) to provide a statement of compliance with this prohibition on payments to any financial institution or entity located outside of the U.S. for any items or services provided under the State plan or under a waiver. States shall submit a SPA no later than June 30, 2011, with an effective date of June 1, 2011.

**Summary of Proposed Change**

The proposed changes to Section 4 (new Section 4.4), General Program Administration, with regard to compliance of 1902(a)(80) of the Social Security Act, P.L. 111-148 (section 6505) which ensures that Delaware shall not provide any payments for items or services provided under the State Plan or under a waiver to any financial institution or entity located outside of the United States.

The provisions of this amendment are effective June 1, 2011 and subject to approval by the Centers for Medicare and Medicaid Services (CMS).

#### **Fiscal Impact Statement**

This amendment imposes no increase in cost on the General Fund.

#### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

GACEC and SCPD endorse the proposed regulation. Based on a change in federal law, federal Medicaid funds cannot be paid to institutions or entities outside the United States. This includes pharmacy providers. CMS is requiring states to submit a conforming plan amendment by June 30, 2011.

**Agency Response:** DMMA thanks the Councils for their endorsement.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the May 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding General Program Administration, specifically, *Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States* is adopted and shall be final effective July 10, 2011.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #11-26**

##### **REVISION:**

Revision: CMS  
OMB No.

#### **STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT State/Territory DELAWARE**

##### **SECTION 4 – GENERAL PROGRAM ADMINISTRATION**

##### **4.44 Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States**

###### Citation

Section 1902(a)(80) of the Social Security Act      X  
P.L. 111-148 (Section 6505)

The State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside the United States.

**15 DE Reg. 82 (07/01/11) (Final)**